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236 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-46160-2024 (O&M)

Date of decision: 02.12.2024

RAJEEV HOODA

...PETITIONER

VERSUS

STATE OF PUNJAB AND ANR.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gagandeep Singh, Advocate for
Mr. Ishan Gupta, Advocate for the petitioner.

Mr. Shubhash Godara, Addl. AG, Punjab.

Ms. Palvi, Advocate for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. This petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 for seeking quashing of FIR No.15 dated 24.09.2013 under Sections 406/498-A of IPC registered at Police Station NRI Ludhiana (Annexure P-1) and order dated 21.04.2014 (Annexure P-4) passed by the learned Chief Judicial Magistrate, Ludhiana, whereby the petitioner has been declared as proclaimed offender along with all subsequent proceedings arising therefrom on the basis of compromise dated 11.09.2023 (Annexure P-5).
2. The following order was passed on 04.11.2024:

"Status report, by way of affidavit of Harjinder Singh, PPS, Deputy Superintendent of Police, NRI Wing, Ludhiana has been filed by learned State counsel in the Court today and the same is taken on record. Copy thereof has been furnished to the learned counsel for the petitioner.

The parties are directed to get their statements recorded qua the factum of compromise in the following manner:



(i) The petitioner shall appear before the trial Court/Illaqa Magistrate concerned on 07.11.2024 or any date thereafter as fixed by trial Court/Illaqa Magistrate for recording statements of the petitioner as well as of the complainant qua the factum of compromise. As and when any such appearance is made, the trial Court/Illaqa Magistrate shall do the needful for recording the statements of the parties qua the factum of the compromise. It shall be open to the trial Court/Illaqa Magistrate to either record the statements of the parties by physical process or by video conferencing as deemed appropriate by the trial Court/Illaqa Magistrate.

(ii) In case the statement is to be recorded by way of video conferencing, the parties concerned shall be duly identified through video conferencing by their respective counsel, subject to the satisfaction of the Presiding Officer.

(iii) The trial Court/Illaqa Magistrate may also choose to get the statements of the parties recorded through some Commissioner, appointed by the Court who would be some Advocate having sufficient standing at the Bar. In case the statement is recorded through some Commissioner, such Commissioner/Advocate shall furnish an affidavit after recording statements to the effect that the parties had appeared before him/her and he/she had recorded their statements as per law and that the said parties had been duly identified by their respective counsel. This shall be subject to satisfaction of trial Court/Illaqa Magistrate.

After recording the statements of all the affected parties in either of the aforesaid manner, the trial Court/Illaqa Magistrate shall submit its report on the basis of the statements so recorded as to whether all the affected parties have entered into a compromise and as to whether the compromise in question is found to be a valid compromise and has been effected without there being any



kind of influence or coercion.

The trial Court/Illaq Magistrate shall also report as regards the following facts after seeking information from Investigating Officer, concerned:

(i) Whether there is any other accused other than the petitioners, arrayed in this petition?

(ii) Whether there is any other complainant or affected/aggrieved party other than the respondents, arrayed in the petition?

(iii) Whether any accused has been declared Proclaimed Offender?

The report be submitted before this Court before the next date of hearing i.e.02.12.2024.

Operation of the impugned order dated 21.04.2014 (Annexure P-4) whereby the petitioner was declared as a proclaimed offender is stayed till the next date of hearing.

Petitioner is directed to deposit a sum of Rs.50,000/- as costs with the Punjab and Haryana High Court Bar Clerks Association, Chandigarh (Regd. No.2441/1995) Bank Account No.65004775776, State Bank of India, IFC Code SBIN0050306, High Court Branch, Chandigarh. Payment of costs and production of receipt thereof shall be a condition precedent for recording of statements in the manner directed for hereinabove."

3. Learned counsel for the petitioner submits that the Hon'ble Court vide the order dated 04.11.2024 staying the operation of the order dated 21.04.2014 (Annexure P-4), whereby the petitioner was declared as Proclaimed Offender, he was directed to deposit Rs.50,000/- as costs with the Punjab and Haryana High Court Bar Clerks Association, Chandigarh. Learned counsel for the petitioner

further submits that the order passed by this Court on 04.11.2024 has been

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complied with and on 05.11.2024 itself, the cost of Rs.50,000/- has been deposited.

4. In compliance of the aforesaid order, a report has been received from the concerned jurisdictional Court that the compromise between the parties is genuine and arrived at without any pressure or coercion from anyone.

5. Learned counsel for the petitioner submits that the petitioner was not in India during the relevant period. Therefore, he was never served and was declared proclaimed offender without following the drill of Section 82 Cr.P.C.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, the matter is taken up for final disposal.

7. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

8. A perusal of the impugned order dated 21.04.2014 (Annexure P-4) reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioner has absconded or is concealing themselves. This Court in the judgment passed in **Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 of Cr.P.C. and non-recording of the satisfaction itself makes such order



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suffering from incurable illegality. In the judgment passed by this Court in **Sonu Vs. State of Haryana 2021 (1) RCR (Crl.) 319**, it has been held that the conditions specified in Section 82 (2) Cr.P.C. for the publication of a proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

9. The sole purpose of issuance of non-bailable warrants or issuance of proclamation is to secure presence of the accused before the trial Court. Petitioner in the present case has himself come forward and has undertaken to appear before the trial Court on each and every date.

10. In view of the compromise and the ratio of law laid down by the Hon'ble Supreme Court in **Narinder Singh and others vs. State of Punjab and another, (2014) 6 SCC 466, Ramgopal and another Vs. State of Madhya Pradesh 2021 SCC OnLine SC 834 and Shakuntala Sawhney (Mrs) Vs. Kaushalya (Mrs.) and others (1980) 1 SCC 63 and Full Bench of this Court in Kulwinder Singh Vs. State of Punjab 2007 (3) RCR (Crl.) 1052**, this petition is allowed and order dated 21.04.2014 (Annexure P-4), vide which petitioner was declared as proclaimed offender as well as FIR No.15 dated 24.09.2013 under Sections 406/498-A of IPC registered at Police Station NRI Ludhiana (Annexure P-1) and all the subsequent proceedings arising therefrom including order dated 21.04.2014 (Annexure P-4) are hereby quashed qua the petitioner.

02.12.2024

*renubala***(HARPREET SINGH BRAR)****JUDGE**